IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 411 (SS) OF 2006

Constable 40819 Kamal Chauhan,
S/o late Sri Balraj Singh,
Presently posted as Constable,
B. Coy. 31 Battalion P.A.C. Rudrapur,
District Udham Singh Nagar. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary, Home Department, Uttaranchal Shasan, Dehradun.
2. Director General of Police, Uttaranchal Shasan, Dehradun.
3. Commandant, 31 Battalion, P.A.C., Rudrapur, Udham Sigh Nagar. .....Respondents.

Mr. Kamlesh Tiwari, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 27.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to reinstate the petitioner in service from 18.03.2004 with retrospective effect. Further prayer has been made for a writ of mandamus commanding and directing the respondents to make payment of the salary to the petitioner, which is due from 18.03.2004 upto 25.12.2005 along with arrears with interest as specified by this Hon'ble Court.

2. Briefly stated, According to the case of the petitioner he was appointed as Constable in P.A.c. on 10.12.1996 and since then he has been discharging his duties with due honesty and dedication. On 16.12.2002, respondent no. 3 passed an order dismissing the petitioner from service.

3. Bring aggrieved by the aforesaid dismissal order, the petitioner preferred an appeal before the appellate authority, but according to the petitioner, the same was rejected on

18.02.2003 by the appellate authority without application of mind and without considering the material facts available to him.

4. Against the aforesaid dismissal order dated 16.12.2002 and 18.02.2003, a writ petition was preferred by the petitioner being Writ Petition No. 23 of 2003 and the same was allowed by this Hon'ble Court on 18.03.2004. The said order is quoted below:-

"Heard Sri U.K. Uniyal, learned counsel for the petitioner and Sri N.C. Gupta, Standing Counsel for the State.

The facts of the case are exactly similar to the facts of the case which had been decided by the Division Bench of this court on 25.9.2002 in Civil Writ Petition No. 2427(SS)/2001 Trikund Kumar vs. The Inspector General (P.A.C.) and others.

Considering this the petition is decided in terms of the said impugned order. Therefore, the petitioner shall be entitled for reinstatement without back wages. The period when he was out of employment shall not be counted for the purposes of pensionery benefits and in fixation of his seniority for the future promotion in case, if any."

Against the aforesaid order, respondent preferred a review petition no. 3980/2004 before this Hon'ble Court and the same was dismissed by the Hon'ble Single Judge on 01.11.2004.

Against, the aforesaid order dated 01.11.2004, a Special Appeal was filed by the respondents being Special Appeal No. 91 of 2004, but the Division Bench of this Hon'ble Court dismissed the same vide order dated 08.12.2005 and the order dated 18.03.2004 was confirmed. The said order is quoted below:-

"This Special Appeal has been preferred against the order-dated 18.03.20204 passed by this court in writ petition No. 223 (S/S) of 2003, Kamal Chauhan Vs. State of Uttaranchal & others and the subsequential order dated 01.11.2004 passed in review petition No. 3980 of 2004, State of Uttaranchal & others Vs. Kamal Chauhan against the order passed in the said writ petition, whereby the learned Single Judge has decided the writ petition in terms of the judgment rendered by Division Bench of this Court in writ petition No.2427 of 2001, Trikund Kumar Vs. The Inspector General (P.A.C.) and others, decided on 25.09.2002."

Pursuant to the order dated 08.12.2005 passed by the Division Bench of this Hon'ble Court in S.A. No. 91 of 2004 The State of Uttaranchal & others Vs. Kamal Chauhan, Commandant 31st Bn. P.A.C Rudrapur passed an order dated 23.12.2005 whereby the petitioner was reinstated in service forthwith.

Learned counsel for the petitioner has submitted that despite the order passed by this Hon'ble Court dated 18.03.2004 in Writ Petition No. 23 of 2003, the petitioner has been reinstated in service on 27.12.2005 in place of 18.03.2004.

Learned counsel for the petitioner has further submitted that when review petition against the order dated 18.03.2004 and Special Appeal against the same have already been dismissed by this Hon'ble Court, the petitioner has become legally entitled for being reinstated from 18.03.2004.

The grievance of the petitioner is that he has been reinstated on 27.12.2005 instead of 18.03.2004 in pursuance of the order-dated 18.03.2004 and salary from 18.03.2004 up to 25.12.2005, due to him, has not been paid.

In this regard, the petitioner has made a representation on 27.01.2006 for payment of salary with increment and for reinstatement from 18.03.2004, but the same has not been disposed of as yet.

Looking to the bonafide grievance of the petitioner, the respondent no. 3 is directed to dispose of the representation of the petitioner reinstating him from 18.03.2004 and paying him salary from that date within a period of one month from the date of presentation of the certified copy of the order in accordance with law.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

27.03.2006
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